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THE STENOGRAPHIC MISCELLANY



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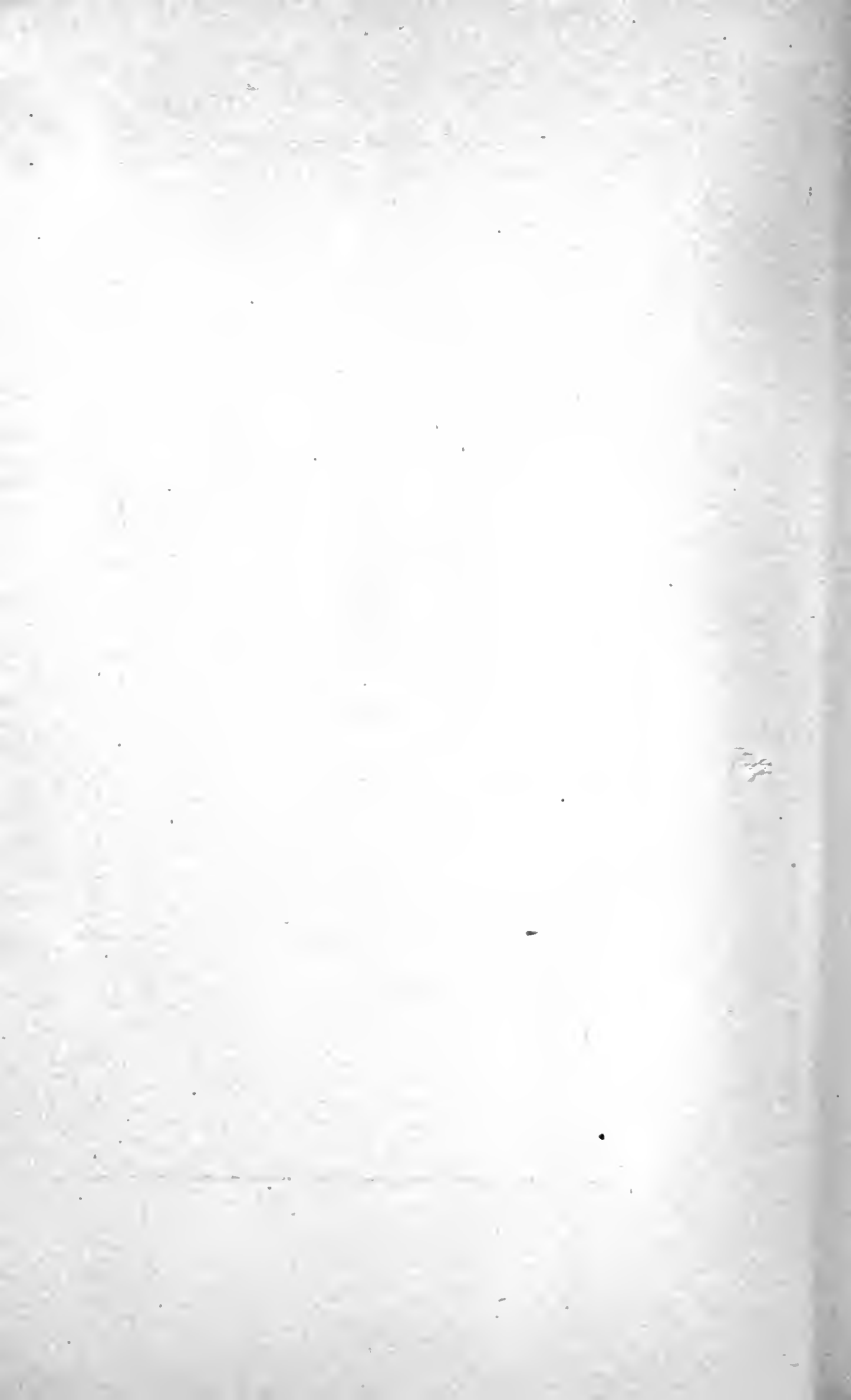
THE
STENOGRAPHIC
MISCELLANY

1903

B. O. BAKER
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THE STENOGRAPHIC MISCELLANY

FOR 1903

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Stenographic Miscellany
For 1903



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ROCHESTER, N. Y.

1903

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THE
Stenographic Miscellany

The Great Smith Family.

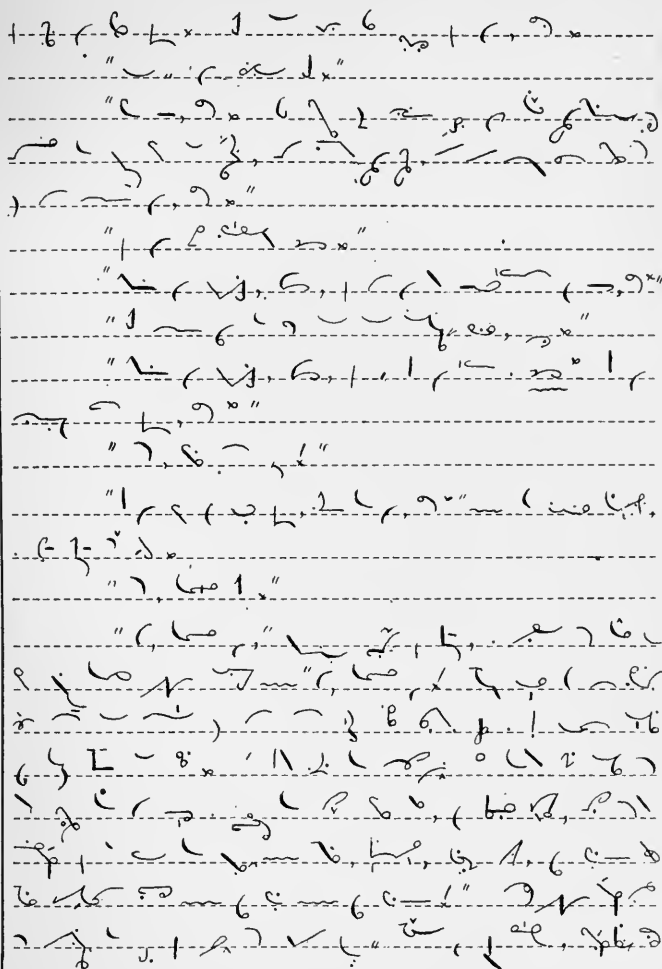
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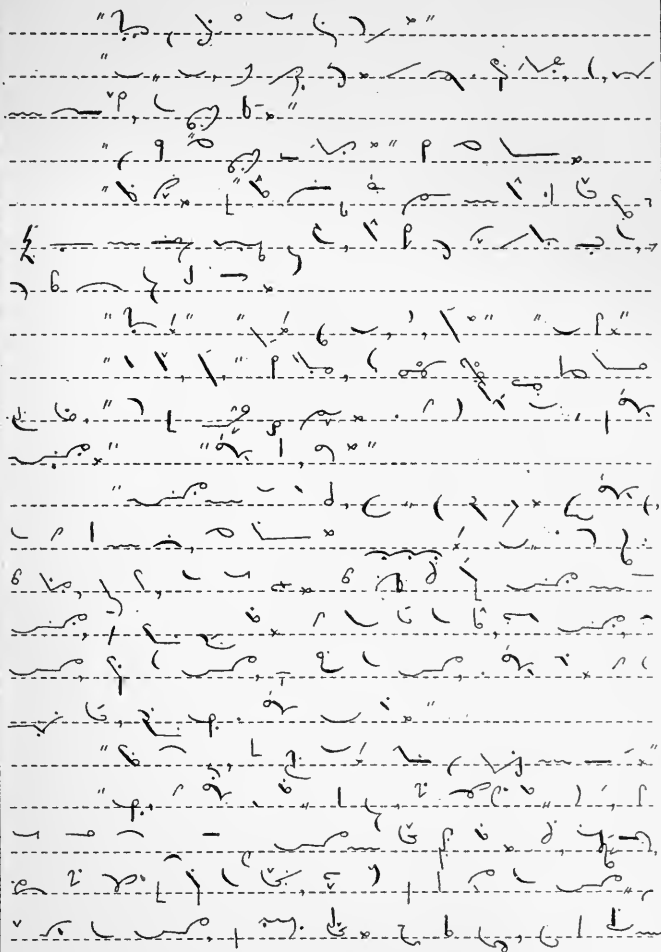
Handwritten text in Urdu script, likely a religious or philosophical treatise, written on lined paper. The text is dense and covers most of the page, with some lines starting with decorative flourishes. The handwriting is cursive and characteristic of the Urdu script.

Handwritten text in Arabic script, likely a religious or philosophical treatise, written on lined paper. The text is dense and covers most of the page.

Mr. Bob Sawyer's Party.

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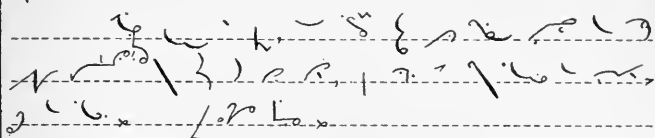
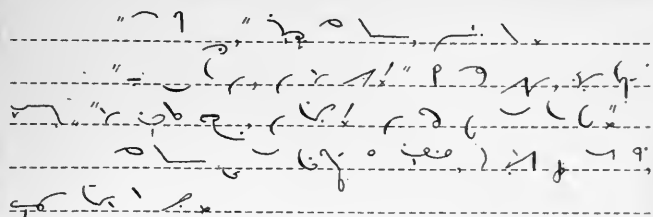


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American Sailor at Play.



Romulus and Rome. सि० १ २ ३ ४ (airoli).

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A Valuable Picture.

A Valuable Picture.

The Telephonic Burglary.

The Telephonic Burglary.

"o h x f u m x"

"r m 1 c l 1 1 1 r 3 e m"

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$\frac{1}{2} \left(\frac{1}{2} + \frac{1}{2} \right) = \frac{1}{2}$

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Handwritten practice lines on lined paper, showing cursive writing exercises.

Handwritten musical notation on a five-line staff, featuring various notes, rests, and bar lines.

5, 7, 9, 11, 13, 15

"6 f ✓ w l x"

"h, / u"

"I, J. L. - ex - 51, 7, 2, 5, 1"

(✓) ¹)

"J = 2/2"

"I know you're here!"

→ 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100

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"6 2 3"

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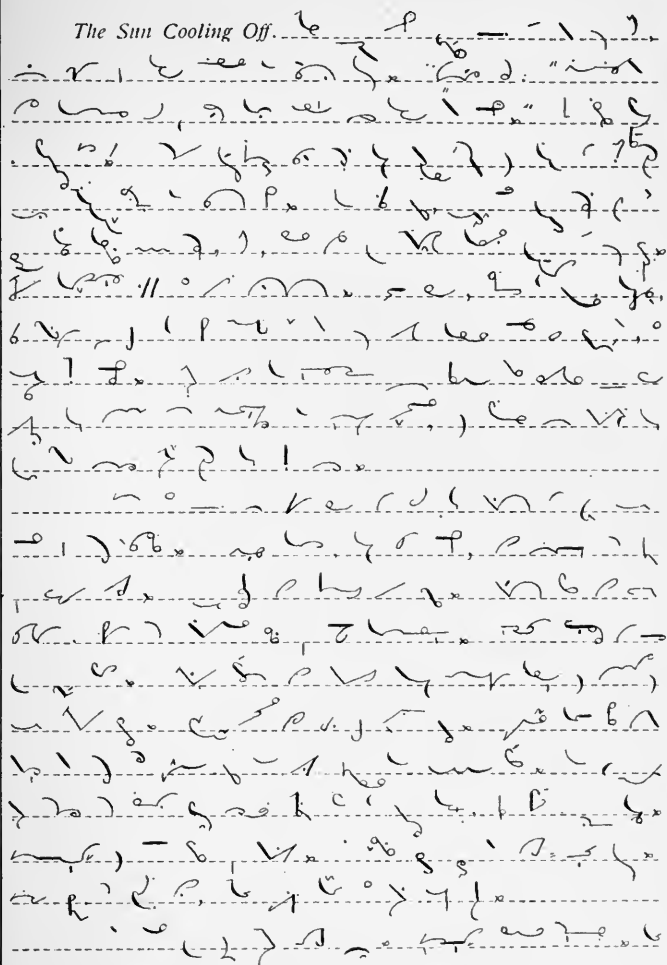
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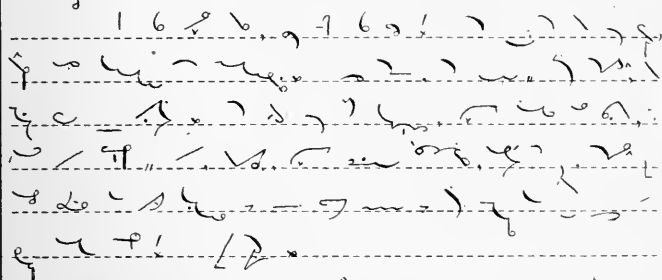
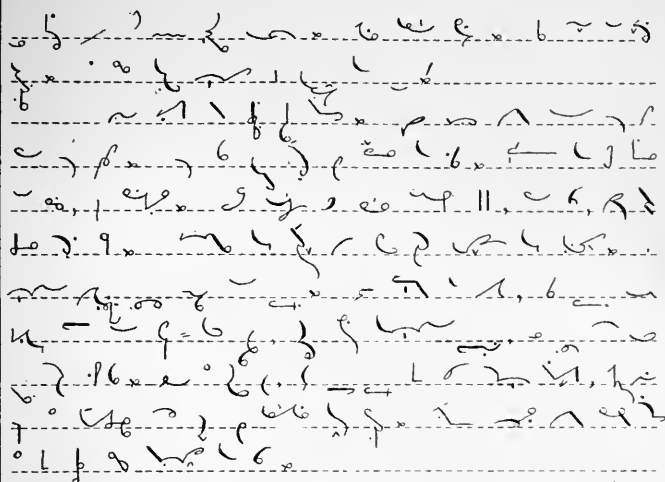
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The Sun Cooling Off.

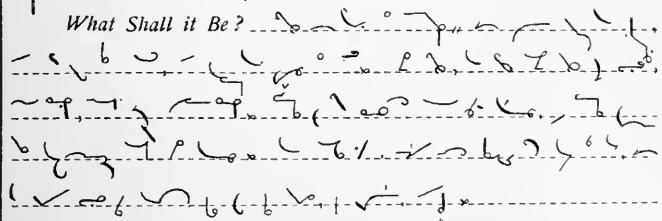


Handwritten stenographic text on a page with horizontal dashed lines. The text is written in a cursive, shorthand style, consisting of various symbols, loops, and strokes. It appears to be a sample of shorthand writing, possibly for a specific language or system. The text is arranged in approximately 15 lines, with some lines starting with a small 'p' or 'f'.

Handwritten stenographic text on a page with horizontal dashed lines. The text is written in a cursive, shorthand style, consisting of various symbols, loops, and strokes. It appears to be a sample of shorthand writing, possibly for a specific language or system. The text is arranged in approximately 5 lines, with some lines starting with a small 'f' or 'p'.



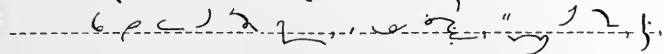
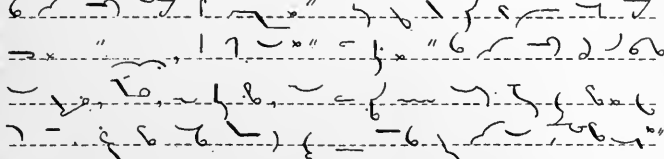
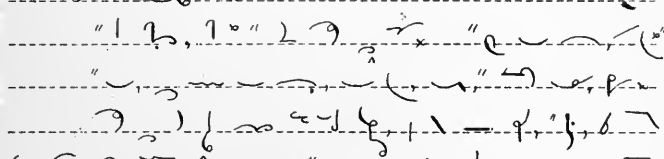
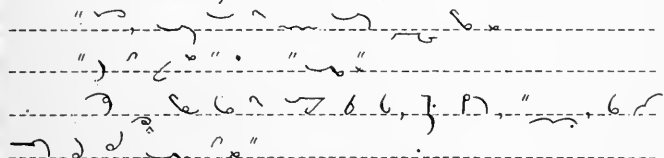
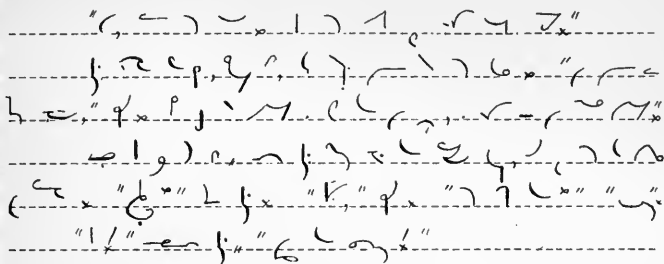
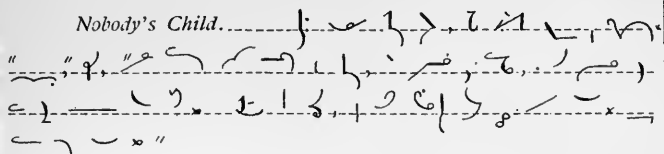
What Shall it Be?



THE OLD-FASHIONED POCKET.

Handwritten musical notation on a five-line staff, featuring various notes, rests, and bar lines. The notation is written in a cursive style, typical of early manuscript notation. The staff is divided into two systems by a vertical line. The notation includes various note values, rests, and bar lines, suggesting a complex musical composition. The handwriting is fluid and characteristic of the period.

Nobody's Child.



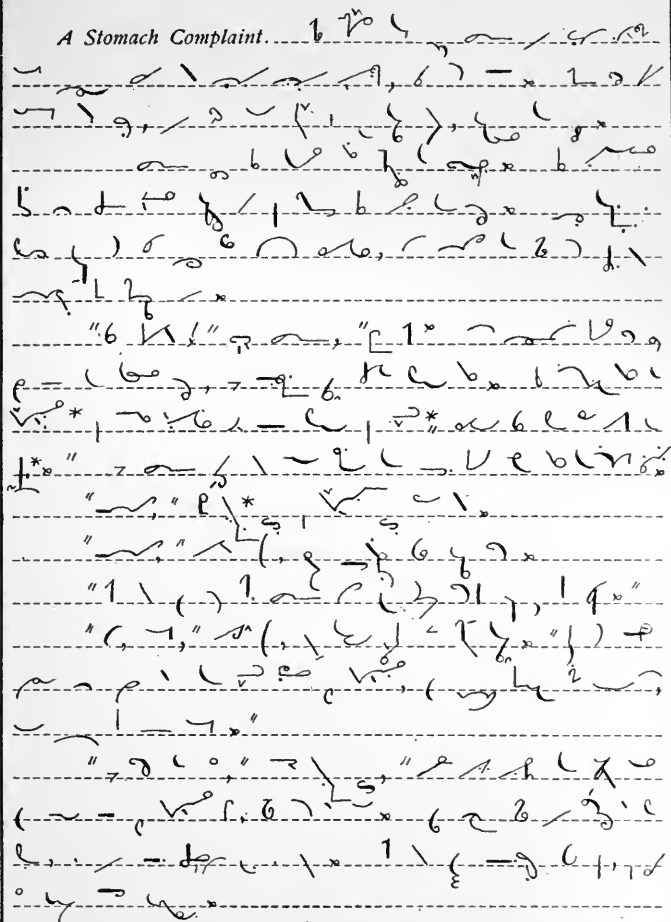
Handwritten practice on lined paper showing various cursive letters and symbols, including 'a', 'b', 'c', 'd', 'e', 'f', 'g', 'h', 'i', 'j', 'k', 'l', 'm', 'n', 'o', 'p', 'q', 'r', 's', 't', 'u', 'v', 'w', 'x', 'y', 'z', and punctuation marks like commas, periods, and exclamation points.

The Captain of the Ship.

The Captain of the Ship.

Handwritten practice on lined paper showing the letters 'P' and 'p' written on the top line, middle dashed line, and bottom line.

A Stomach Complaint.



The Rose Tree

Handwritten musical notation on three staves, featuring various notes, rests, and bar lines.

Handwritten notes on lined paper, likely a student's work. The text is written in cursive and includes several lines of text, some of which are crossed out or corrected. The notes appear to be a mix of letters and symbols, possibly representing a code or a specific notation system. The handwriting is somewhat messy and hurried.

"r," - ("r") - b b r - c b f -
c 2 r - r - L 5, + ~ 7 a) - f -
b, + ~ y f b, - o e y b b - f x x
o ~ e r - - l l' b, b - ~ b - m f
b' b - (- 1 r v, } - b - ~ -
b b 1, + - f - ~ - v, "

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

Handwritten stenographic symbols on a four-line staff, including various strokes and dots.

Handwritten stenographic symbols on a four-line staff, including various strokes and dots.

Hearing by Sight.

Handwritten stenographic symbols on a four-line staff, including various strokes and dots.

What is Antiquity?

1. The study of the past, especially of the ancient world.
 2. The period of time from the beginning of the world to the present.
 3. The study of the remains of ancient civilizations.
 4. The study of the history of the world.
 5. The study of the art and literature of the past.
 6. The study of the customs and traditions of the past.
 7. The study of the science and technology of the past.
 8. The study of the social and political life of the past.
 9. The study of the economic life of the past.
 10. The study of the religious life of the past.
 11. The study of the military life of the past.
 12. The study of the legal life of the past.
 13. The study of the medical life of the past.
 14. The study of the philosophical life of the past.
 15. The study of the literary life of the past.
 16. The study of the scientific life of the past.
 17. The study of the artistic life of the past.
 18. The study of the intellectual life of the past.
 19. The study of the cultural life of the past.
 20. The study of the human life of the past.

Handwritten practice on lined paper, showing various cursive and semi-cursive letter forms and combinations, likely for a script like Urdu or Persian. The text is written in a fluid, connected style across multiple lines.

A Good Stenographer.

A Good Stenographer.

Consider the End:

Consider the End:

My first Bank Deposit.

I have just deposited
 the sum of \$100.00
 in your bank for my
 savings. I enclose
 the check for the same.
 Please send me the
 receipt for the same.
 Yours truly,
 J. B. Smith

1. 8. 1 - 9. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

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Scraps.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

What is Real?

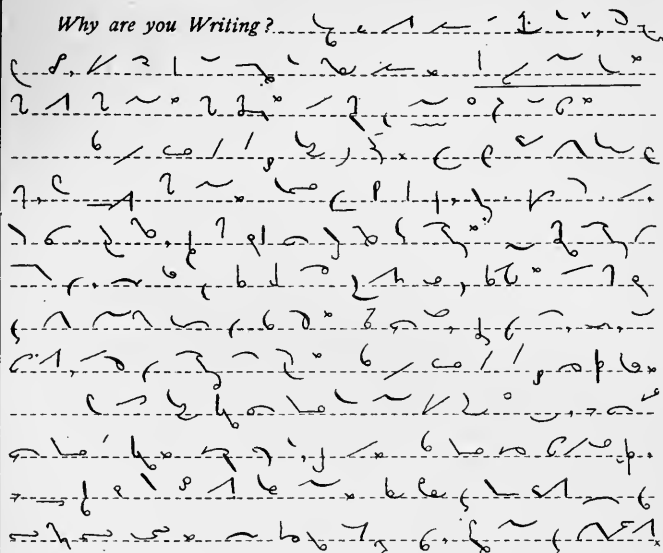
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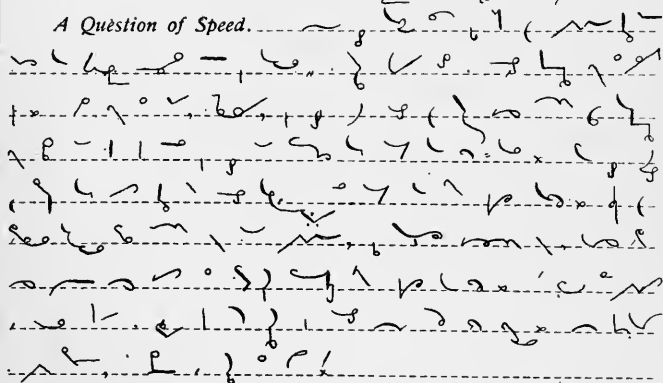
The Monroe Doctrine.

1823
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Why are you Writing?



A Question of Speed.



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Handwritten practice on lined paper:

Row 1: A bracketed pair of numbers, followed by a bracketed pair of numbers with a superscript 7, followed by a superscript 26, and a minus sign.

Row 2: A superscript 1, followed by a bracketed pair of numbers, followed by a superscript 28, followed by a superscript 27, and a minus sign.

Row 3: A bracketed pair of numbers, followed by a superscript 26, followed by a plus sign, and a bracketed pair of numbers.

Row 4: A superscript 2, followed by a minus sign.

3 5 6
 2 5 7 26 6 7 1
 1 2 6
 1 2 6 7 1

Handwritten notes on lined paper, likely a student's work. The notes are written in cursive and include the following text:

2. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

L ~ 100 / 92
J + 100 / 64
L ~ 100 / 64
L ~ 100 / 64
L ~ 100 / 64

Handwriting practice sheet for the letter 'y' on lined paper. The sheet contains three rows of dashed lines for tracing. The first row shows 'y' in various orientations (upside down, slanted, etc.). The second row shows 'y' with different stroke orders and directions. The third row shows 'y' with various flourishes and combinations. At the bottom, there are two sets of dashed lines for independent practice, labeled '1.' and '2.'

[Handwritten practice exercises on lined paper, showing various cursive letters and combinations.]

McKay, Arthur, ... 2

C. 1. 2e 6

2 1 2 3 4 5

7 8 9 10 11

12 13 14 15 16

17 18 19 20 21

[illegible]

Wilson, Orrin,

C. 2-4-9-9-1
1-2-10-02

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1 1 1 2 4

2 7 i 1
2 p i 3 1 4

6100 342 1

4 2 1 6

10.02 ~ 24.

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K. 1. 6, 7 - 14

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25 (3) 2 { 1

Handwritten practice lines showing various symbols and characters, including numbers and punctuation, written on lined paper.

h i
K. 1 2 3 4 5

121
9th April 1950

12" L } - 7 V
8" h e z i c

Handwritten musical notation on a five-line staff, featuring various notes and rests.

Handwritten musical notation on a five-line staff, featuring various note values and rests.

Handwritten musical notation on a five-line staff, featuring various notes, rests, and bar lines. The notation is dense and appears to be a single melodic line. The notes are mostly eighth and sixteenth notes, with some longer rests. The staff is divided into measures by vertical bar lines. The handwriting is in a cursive, handwritten style.

| | |
|---|---|
| <p> <i>f</i> <i>q</i> <i>h</i> — <i>z</i> <i>e</i> <i>l</i>
 25 ee 6 </p> | <p> <i>c</i> <i>d</i> <i>h</i> <i>g</i> <i>p</i> <i>x</i> <i>c</i> <i>h</i> <i>1</i>
 <i>y</i> — <i>1</i> — <i>1</i> <i>15</i> <i>ee</i> </p> |
| <p> <i>b</i> <i>e</i> <i>o</i> <i>o</i> <i>h</i> <i>z</i> <i>h</i> <i>l</i> <i>h</i>
 <i>f</i> <i>1</i> — <i>1</i> <i>i</i> </p> | <p> <i>h</i> <i>1</i> <i>e</i> — <i>6</i> <i>1</i> <i>1</i> <i>h</i> <i>h</i>
 <i>1</i> <i>27</i> <i>h</i> — <i>h</i> <i>h</i> <i>2</i> <i>z</i> <i>30</i> </p> |
| <p> <i>m</i> <i>f</i> <i>g</i> <i>g</i> <i>r</i> <i>1</i> <i>h</i> <i>h</i>
 <i>h</i> <i>h</i> <i>h</i> <i>h</i> <i>h</i> <i>h</i> </p> | <p> <i>h</i> <i>h</i> <i>h</i> <i>h</i> <i>h</i> <i>h</i>
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| <p> <i>s</i> <i>1</i> <i>h</i> <i>20</i> <i>h</i>
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Handwritten musical notation on a two-staff system, featuring various notes, rests, and bar lines. The notation is dense and appears to be a musical score or exercise.

SUPREME COURT—Before Mr. Justice HUBBELL, and a jury.

ORRIN WILSON

vs.

ARTHUR MCKAY.

E. L. Carter, for plff.

James R. Kelly, for deft.

Elmira, N. Y., February 7, 1904.

Wilson, Orrin, sworn.

To Mr. Carter:

Q. Where do you reside? A. In Byron.

Q. You have lived there how long? A. Three and a half years.

Q. Before going there, where did you live? A. In Buffalo.

Q. What is your business? A. I am president of a manufacturing company.

Q. Have you any other business? A. Yes, sir.

Q. You did other business within the last six months, and at and after the time of the transaction in this action? A. Yes, sir.

Q. What was your business, in connection with this matter? A. I was president of an iron company, and engaged in raising money for certain purposes.

Q. Had you had any experience in mining? A. I was superintendent of mines, and for a number of years I have been connected with the business, in one way and another.

Q. You knew of the iron mine in question, located in the northern part of the state? A. Yes, sir.

Q. How long have you known about it? A. The first I knew about it, was about six or eight months before the contract in question was made.

Q. Describe briefly the situation of the mine and mineral deposits there? A. The mine is situated three or four miles from the nearest railroad station. It is a mineral that contains iron and sulphur.

Q. How is the foreign matter taken out of the mineral? A. They use a concentrating plant to take out the foreign matter, so that the product will run as high as possible in sulphur. That is used in making sulphuric acid, which is used in refining crude oil and in making paper.

Q. Sulphuric acid is the valuable element in the ore? A. Yes, sir.

Q. In order to make this ore of value, must it go through a crushing process? A. Yes, sir, and concentrating.

Q. Is there any place in that vicinity where that can be done? A. Yes, sir; Mr. McKay does it.

Q. After that is done, is there occasion for shipping the ore?
A. Yes, sir.

Q. What is the next process, after crushing? A. Taking out as much foreign matter as possible, and then it is shipped.

Q. What takes place after that? A. It is burnt.

Q. There is no place in the immediate vicinity of the mines, where the burning process can be had? A. No, sir.

Q. And it is necessary that it be shipped away? A. Yes, sir.

Q. State in regard to the matter? A. Before I had anything to do with it, I looked over the property sufficient to satisfy myself that the quantity was almost inexhaustible. I found old shafts sunk down to a considerable depth, and I saw hills of it through which they were then cutting and opening to it, and the supply seemed to be inexhaustible.

Q. Was there any question in regard to this supply continuing for at least ten years? .

Objected to, as calling for a conclusion of the witness.

Q. Can you make that a little more definite, and say how long a period it would last, at a certain amount of shipment a day—say, a shipment of eighty tons a day?

Objected to, as immaterial and incompetent, and as calling for the conclusion of the witness, and as incompetent on the measure of damages.

The Court:—You may show by the witness the number of tons of ore there was in that mine, if you can.

The question was withdrawn.

Q. Have you had experience in the construction of railroads?
A. I have.

Q. To what extent? A. I was general manager of seven hundred miles that is now part of the Pennsylvania Railroad, and had charge of building about three hundred miles of it.

Q. You had a knowledge of the cost of constructing railroads, at the time of the making of this contract? A. Yes, sir.

Q. Did you observe the right of way over which it was proposed to build this road? A. I did.

Q. When was your first talk with Mr. McKay, in regard to the construction of a railroad from this mine to the Rome and Watertown Railroad? A. It was on the twenty-eighth of July.

Q. That was about a month before the making of these papers?
A. Yes, sir.

Q. Where did you see him? A. At the mines.

Q. Before that time, had you received any word from him?
A. Not directly.

Q. You went there to see him? A. Yes, sir.

Q. Did you have a conversation with him there? A. Yes, sir.

Q. Who else was present at the conversation? A. Mr. Barton.

Q. Anybody else? A. No.

Q. Barton was one of the parties who signed the contract, later on? A. Yes, sir.

Q. Did you have a talk with them in regard to the construction of the railroad? A. Yes, sir.

Q. How long a time did the conversation take? A. About a day, I should judge.

Q. Give us an outline of that talk.

Objected to, as immaterial and incompetent, and that it was afterwards embodied in the contract.

Mr. Carter:—It is not with a view of altering the terms of the agreement, that I ask this. Everything that was material was not embodied in the contract.

Q. Was there any talk, aside from this one that you speak of, subsequent to the 28th of July and before the making of the contract? A. Yes, sir.

Q. When was that? A. That was on the 26th and 27th of August.

Q. The contract was executed on the 28th? A. On the 27th of August.

Q. At whose instance did you go there on the 26th? A. I took Clifford and his attorney there.

Q. He is the third party to the agreement? A. Yes, sir.

Q. Did you have any conversation with regard to the contract, on the 26th? A. Yes, sir; we talked half the day and all the evening about it.

Q. On the following day, the paper was signed? A. Yes, sir. We drove up to the mines, on that day.

Q. Do you know whether that paper was recorded or not?—I show you a paper, and ask whether that is a copy of the agreement made on that day? A. There was but one copy made. Clifford's attorney took that.

Q. Examine this, and state whether it is a correct copy of that paper? A. It is.

A certified copy of the record of the contract was offered in evidence, dated August 27, 1902.

Objected to, as immaterial and incompetent, and not the best evidence.

Received; exception. Marked Exhibit 1.

Q. Was there a talk had in your presence with regard to recording this paper? A. I don't think there was, at that time; there was afterwards.

Q. Did McKay take part in that conversation? A. I don't think he did.

Q. This paper I have shown you is a copy of the contract, and the same as is set forth in the complaint? Yes, sir.

Q. How long were you there, after the execution of the paper? A. It was executed about eleven o'clock at night, and I left about seven o'clock the next morning.

Q. Did you see McKay again, before you received a letter from him stating that the deal was off? A. No, sir.

Q. I show you a letter and envelope, and ask if they were received by you? A. They were.

The letter and envelope were put in evidence—letter dated August 30, 1902. Exh. 2, 3.

Q. When did you first see the defendant again, after that time? A. On the eleventh of September.

Q. That was where? A. In New York, at the Grand Hotel.

Q. Was that the first time you saw him after that? A. Yes, sir.

Q. Who was present? A. Barton, and McKay, and myself.

Q. Clifford was not there, at that time? A. No, sir.

Q. Prior to that time, had you delivered a letter for Clifford to the defendant? A. Yes, sir.

McKay, Arthur, sworn.

To Mr. Carter:

Q. You are the defendant in this action? A. Yes, sir.

Q. I show you a letter; do you recall the contents of that? A. I couldn't say whether it was exactly like that, but it was practically the same thing.

Q. So far as you know, it was the same? A. I couldn't say.

Q. Do you know where the original of that letter is? A. No, sir.

Q. Was it among the papers which you delivered to your attorney in this case? A. I don't know whether it was or not. I had a letter from Mr. Clifford.

Q. Is this the letter, which your attorney has handed to me?—Did you receive that in New York city, at the time of its date? A. Yes, sir.

The letter was offered in evidence.

Objected to, as immaterial and incompetent, and not binding upon the defendant.

Letter marked Exh. 4, for identification.

Wilson, Orrin, recalled.

To Mr. Carter:

Q. I show you exhibit 4—have you ever seen that letter before?

A. I did, on September 10, 1902.

Q. Did you see it before it was delivered to the defendant? A. Yes, sir.

Q. Whom did you take it from? A. From Mr. Clifford.

Q. Did you make a copy of it, at that time? A. I did.

Q. And then did what with it? A. Left it at the Grand Hotel for Mr. McKay.

Q. You say you had a talk when McKay and Barton were present? A. I did.

Q. Was exhibit 4 shown there, and commented upon? A. Yes, sir.

The letter was again offered in evidence, dated September 10, 1902,—Exh. 4.

Objected to, as immaterial, incompetent, and irrelevant.

Received; exception.

Q. State what took place in the conversation between yourself and Barton and McKay?

Mr. Kelly:—I object to any conversation, as not binding upon the defendant. Received.

Q. Who spoke first, and what was said? A. I asked McKay whether he had got the letter I had left in his box the night before. He said he had, and took that letter out. I asked if he was going to comply with the request. He said there was no use of that—that the lease was put up as collateral security with some one else. I asked if he didn't know that at the time the contract was made. He said he didn't understand it was in the agreement. Then he went on to explain that he had sold a quarter interest in the property for \$25,000, under an agreement with the purchaser that he was to have a certain amount per ton until his \$25,000 was returned, and that the lease was put up as collateral security for that. Barton and he then had some words about this not coming out at the time the agreement was made.

Mr. Kelly:—I object to any conversation between Barton and McKay, as not binding upon the defendant.

—He said, "What did you sign that contract for, if you couldn't fulfill it?" He said he didn't know it was in the contract. Barton said, "What did you suppose we wanted the contract for, if we couldn't have the lease?" That was about all. It was repeated several times.

Q. Do you recall anything further that was said during the conversation? A. I made the remark that that was the most important part of the thing, because in case of any physical or financial difficulty happening to him, we wanted to be in a position to go on and fulfill the terms of the lease, so as to make the road valuable. He said he couldn't put up the lease, and that that was all there was of it.

Q. Was it said at that time, by McKay to Barton, in words or substance, that Barton had no interest in the contract?

Objected to, as leading. Received; exception.

A. Yes, sir, that was mentioned. McKay said Barton had no right in the lease.

Q. And no interest in this contract? A. That he had no right in the lease, or in the stock of the railroad that was to be organized, of which I was to have one-half and Barton and McKay were each to get a quarter.

Q. I understood you to say, you had the same talk at the time of the execution of the contract, as you had at the interview in the hotel? A. We did.

Q. Was there any further talk at that time? A. Not that I remember.

Q. When was your next talk on this subject? A. We arranged for a meeting at the Astor House on the next day. McKay and Barton and Clifford and myself were there at that time.

Q. What occurred? A. McKay repeated the same thing—that it was not possible for him to put up this lease. He said he had sold a quarter interest in the property for \$25,000, and the man was to repay that amount at so much a ton of ore shipped, and that the lease was security for the fulfilment of that contract.

Q. What was said, in response to that? A. We went over the same ground as to why he had not said that at the time the contract was signed—that it was a very important part of it, in the event of his getting into any difficulty, that we might go on and fulfill what he had undertaken to do in order to get freight for the road. Barton said to him, "Why didn't you tell us this, at the time the contract was made, and save us all this trouble?"

Q. Was there any offer at that time to fulfill the agreement?
A. No, sir.

Q. That was the last talk that you had with McKay, before the time of the commencement of this action? A. Yes, sir.

Q. Describe the amount of the loss you have sustained by reason of the contract not having been carried out, giving the details?

Objected to, as immaterial, incompetent and irrelevant, and not the proper method of establishing the measure of damages.

Overruled; exception.

Q. State what the profits of the enterprise would have been, if you can so state, if the contract had been carried out and the road had been constructed?

Objected to, as before.

Q. Do you know the cost of the operation of a railroad of this kind, during the last six months, and at all times? A. I have had experience in that, and—

Q. What experience have you had in regard to the cost of operating a railroad? A. For a number of years I have been superintendent of a railroad, and I have had charge of operating other roads.

Objected to, upon the ground that the witness was not shown to be qualified to answer.

Q. Who did? A. McKay and I. I know that to be the fact. On the basis of the contract, of eighty tons a day, at sixty cents a ton, the receipts would be \$48 a day, or \$1,248 a month of twenty-six working days. The contract provided that one-half of those receipts should be paid to the trustee of the mortgage, toward retiring the bonds. The contract next provides that we should get nothing out of it until the bonds were paid. If we take one-half of the guaranteed receipts, that would be \$624 a month. The balance, after deducting the cost of operation, would be \$224, or a total of—

Objected to.

Q. What was included in the operation of the road? A. An engineer and two men and the coal; and as they expected to make only two trips a day, over the road, the balance of their time they could spend in working along the road.

Q. In making this calculation, of the cost of operation, you took into consideration the expense of the engineer and fireman?

A. We intended to put on a ten-ton engine, as the grade was down all the way from the mine.

Q. Do you say that within your experience the amount you have given us would thoroughly cover the expense of operation?

A. Yes, sir. We deducted \$400 from the other half of the earnings, and it made a total of \$848 that would go to the retirement of the bonds.

All this evidence was taken under the objection and exception of the defendant's counsel.

—At this rate, both the principal and interest on the bonds would be paid in two and a half years.

Q. What was the length of time that this agreement was to run? A. Ten years from its date.

Q. How much time had expired on the lease, at the time of the making of the contract? A. About one year.

Q. Now, go on. A. Under the contract, I was to have one-half the stock of the road, and would be entitled to one-half of the earnings after the bonds were retired.

Q. The contract provided for the amount of money that was to be expended by the parties in the construction of the road? A. Yes, sir.

Q. What would have been the value, within your experience, of this road, constructed according to the terms and outlines of this contract, at the time of its completion? A. \$16,000.

Q. Under the contract, you were to have a half interest in that road? A. Yes, sir.

Q. Go on with your computation. A. The McKay lease was for ten years. One year had expired when the contract was made. The lease would have run three and a half years before I should have had any revenue from my ownership. During the balance of the term of the lease, I should have one-half of the receipts, after the payment of expenses.

Q. What do you compute that amount at? A. For the six years and a half, \$15,000.

Q. What do you say, as to whether there would have been opportunity for further shipment than the eighty tons provided for in the contract?

Objected to.

Q. What was the length of this road? A. Approximately, three miles.

To Mr. Kelly:—

Q. How much do you figure that the expense of running the road would be? A. Fifteen dollars a day.

Q. How much would you pay the engineer? A. About two dollars a day.

Q. How much would you pay the two men? A. About three dollars.

Q. How much for the coal? A. McKay and I estimated—

Q. What were the other items that go to make up your damage of \$30,000? A. When the bonds were retired, I would own one-half the road, which would be \$8,000. If the shipments did not increase, the rate of freight decreased after the bonds were paid, from sixty to twenty-five cents a ton for the paper company's shipments, and fifty cents for McKay's shipments, would make an average of \$200 a month for my share of the net earnings for six and a half years, the unexpired term of the lease.

Q. You claim that you were damaged in \$15,000. A. I should still have owned one-half of the road.

Q. That would make \$23,000? A. Yes, sir, but it was understood at that time that the capacity of the mills would be increased, and every assurance was given that the shipments would be increased also.

Q. You base your balance of \$30,000 purely upon the increased shipments and the increase in the capacity of the mills? A. From Mr. McKay's assurance that they would be.

Q. When did you first see McKay? A. On the 28th of July.

Q. How did you come to meet him? A. Through Mr. Barton.

Q. It is a fact that Barton took you up there to meet McKay, and introduced you as a promoter, for you to get capital to build the road? A. No, sir. I went by myself, and met them.

Q. You didn't know McKay, until you were introduced by Barton? A. No, sir.

Q. You went up there for that purpose? A. I went to look it over, before bringing it to the attention of capitalists.

Q. Other than this one time, did you ever see that mine? A. I saw it the first time I saw McKay.

Q. How many times have you seen it? A. Twice.

Q. When was the second time? A. The day we made the contract.

Q. Were you ever interested in this kind of business before? A. Yes, sir.

Q. Where were you interested in it? A. Mineral City, Va.

Q. Do you remember whether or not there were any interlineations in the original contract that you made? A. Yes, sir.

Q. It was pretty well filled with interlineations? A. As I remember it, it was drawn on yellow paper, and had interlineations.

Q. Was every interlineation signed? A. Yes, sir, all we could find were initialled by the attorney.

Q. After this letter of August third was received by you from the defendant, did you reply to him? A. Yes, sir.

Q. Is this the letter that you sent to Mr. McKay? A. Yes, sir.

Q. After you received that letter, did you have any knowledge as to whether he was doing any work under the contract? A. I had not. When he said the deal was off, I supposed it was stopped.

Q. Is it not a fact that McKay told you on September tenth that he could not assign that lease to you because it had been assigned as collateral security for a loan? A. No, sir, he did not; it is as I have stated.

Q. Didn't you and Clifford and Barton and McKay agree at that time that this clause with reference to his assigning the lease should be waived? A. No, sir. No such agreement ever took place.

Q. Didn't he deliver to you a copy of his lease of the mineral lands? A. I think he did.

Q. Do you know whether Clifford ever had a copy of it? A. We were not satisfied that it was a copy of it. We had considerable doubt about that.

Q. Do you know whether a copy of it was delivered to Clifford? A. I do not.

Q. This railroad was to be narrow gauge? A. Yes, sir.

The plaintiff here rested.

Mr. Kelly moved for a dismissal of the complaint, upon the grounds:

1. That it nowhere appeared in the case that the plaintiff had done anything under the terms of the contract toward carrying out his part of it, and that he was therefore in no position to maintain the action.
2. That it appeared that Barton was one of the parties to the contract and that although he had no interest in the lease he should have been made a party to the action.
3. That the plaintiff had not furnished proof sufficient to establish his cause of action.

Denied; exception.

The Court charged the jury, as follows:

Gentlemen of the jury:—On the 27th day of August last, the defendant in this action was the possessor of a lease of certain mining privileges in Wayne county. The mine was distant from the nearest railroad point some three miles. On that day, a contract was entered into between the defendant and one Barton, parties of the first part, Mr. Clifford, party of the third part, and the plaintiff as party of the second part; and by the terms of that contract it was provided that the party of the first part should organize a railroad corporation, and that Clifford, if, after an examination of the lease and of the minerals the same were found satisfactory to him, should provide funds not to exceed the sum of \$20,000 for the construction of this road, for which Clifford was to receive bonds of the road, secured by a mortgage upon its property, to the amount of \$30,000. The parties of the first part agreed to transfer and assign the lease held by the defendant for the mining privileges to a trustee to be named in the mortgage and also agreed, for the sum of \$7,500 to be advanced to them by Clifford, to provide rights of way, grade, and lay ties and rails over the same, and to construct a suitable bridge across the river which was to be crossed by the railroad, payments to be made as the work progressed.

Three days after the execution of this contract, the defendant informed the plaintiff by letter that the agreement was off, owing to certain conditions which he mentioned and to which your attention has been called by counsel.

The plaintiff brings this action to recover damages which he claims to have sustained by reason of a breach of the agreement on the part of the defendant. You have heard the testimony, and have listened to the arguments of counsel, and it is unnecessary that I should call your attention further to the evidence. The questions for your consideration are, whether there has been a breach of the contract by the defendant, and if so what amount of damage has been suffered by the plaintiff.

The plaintiff says that after the receipt of this letter from the defendant, the parties to the agreement had a meeting in New York, and that at that meeting the defendant declined to go on and construct the road. He has introduced evidence of a letter written by Clifford in which Clifford asked the defendant to perform his part of the agreement so that he could fulfill on his part. The part that Clifford wished him to perform at that time, was to deliver to him a copy of this lease. The defendant says he did this immediately upon his return home. He has given evidence tending to show that after the receipt of that copy by Clifford, Clifford declined to advance the money. You remember that in

the contract Clifford had the option whether to advance the money after an examination of the lease and the minerals. Of course, the defendant could not be expected to purchase the right of way, or to buy rails and lay ties, until money was provided for that purpose. If Clifford was ready and willing to advance the money, and still the defendant failed to do it, that was quite a different thing. If it is true that after an examination of the lease Clifford did decline to advance money with which the defendant might perform his part of the contract, then you will have very little difficulty in finding that the defendant was not responsible for a breach of the contract.

A good deal has been said in reference to the failure of the defendant to assign this lease to the trustee. The mortgage was to have been executed by the corporation; and there is no evidence that any corporation was formed or that the mortgage was ever executed, or that there was ever any trustee named. Of course, until all these things were done the defendant could not make such a delivery. That would not excuse him for declining to deliver the lease, however, if he did decline; and the testimony of the defendant and Mr. Wilson will be considered upon this question.

If you come to the conclusion, after a careful consideration of the evidence, that there has been a breach of the contract on the part of the defendant, your verdict will award to the plaintiff such damages as he has sustained. He has testified that the value of one-half of this road, that he would have been entitled to under the contract after the indebtedness was paid, would be \$8,000. That is the amount your verdict will state, if you find in his favor, the court withdrawing from your consideration the other items of damage which have been mentioned during the trial of the case.

Take the case, gentlemen, and carefully consider each item of evidence that has been given, giving to each part of the testimony the weight to which you think it entitled, and render such a verdict as in your judgment you think its importance demands. The decision of every question of fact in the case rests with you, and the responsibility of a correct finding rests with you and not with the court. It would not be proper that I should express or intimate any opinion as to what your finding should be, but your verdict should be the expression of your own best judgment.

Mr. Carter asked the court to charge, that if the jury find that the defendant did refuse to carry out his part of the agreement, their verdict should be for the plaintiff.

So charged.

Mr. Carter excepted to the withdrawal by the court of the other items of damage claimed.

The jury rendered a verdict for the plaintiff for \$4,800.

Mr. Kelly asked the court to set aside the verdict, as contrary to the law and against the weight of the evidence, and upon all the grounds stated in section 999 of the Code of Civil Procedure.

The motion was entertained, to be argued later.



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